

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11
:
CELADON GROUP, INC., *et al.*,¹ : Case No. 19-12606 (KBO)
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Debtors. : (Jointly Administered)
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-----X **Re: Docket No. 921**

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO ENTER INTO THE PURCHASE AGREEMENT; (II) APPROVING THE SALE OF THE MEXICAN BUSINESS, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (III) AUTHORIZING THE DEBTORS TO TAKE ALL ACTIONS NECESSARY TO CONSUMMATE THE PRIVATE SALE; (IV) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS; (V) APPROVING BIDDER PROTECTIONS; AND (VI) GRANTING RELATED RELIEF

The official committee of unsecured creditors (the “Committee”) of the debtors and debtors in possession in the above-captioned cases (the “Debtors”), by and through its undersigned counsel, respectfully submits this limited objection (the “Objection”) to the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Enter Into the Purchase Agreement; (II) Approving the Sale of the Mexican Business, Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (III) Authorizing the Debtors to Take All Actions Necessary to Consummate the Private Sale; (IV) Authorizing the Debtors to Assume and Assign Certain*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.



Executory Contracts; (V) Approving Bidder Protections; and (VI) Granting Related Relief [D.I. 921] (the “Motion”).² In support of its Objection, the Committee respectfully states as follows:

LIMITED OBJECTION

A. The Private Sale Should Not Be Approved and the Court Should Direct the Debtors to Sell the Mexican Business Through A Public Auction With Reasonable Bidding Procedures

1. The Committee does not oppose the sale of the Mexican Business but is constrained to object to the Motion because the Debtors propose to sell the assets to one of their secured lenders pursuant to a private sale while other third parties are actively engaged in diligence. The Committee understands that there are third parties who have signed non-disclosure agreements and expressed serious interest in the Mexican Business. The Committee’s professionals have also communicated with those third parties and understand that they are performing diligence and holding discussions with the Debtors. Given the renewed interest in the Mexican Business by third parties, the Court should not approve a private sale. Instead, the Court should direct that the sale of the Mexican Business proceed through a formal bidding process with reasonable milestones, including a deadline to submit bids and an auction, if necessary. Those procedures will result in a more open and transparent sale process, maximize value for the estate, and ensure that all potential purchasers have an opportunity to bid.

2. Under those circumstances, the Debtors should not be permitted to rush to consummate a judicially disfavored private sale to one of their secured lenders. *In re Summit Global Logistics, Inc.*, 2008 WL 819934, *9 (Bankr. D.N.J. Mar. 26, 2008). Nor have the Debtors met their heavy burden of proving there are exigent circumstances that warrant dispensing with a

² Capitalized terms use but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

regular public sale process.³ *See, e.g., In re Prototype Engineering & Manufacturing, Inc.*, 2018 WL 1267684, at *2 (Bankr. C.D. Ca. Mar. 7, 2018) (holding that subject property be sold by way of public sale, as opposed to private sale, because there was no evidence as to the fair market value of the property being sold); *In re Planned System, Inc.*, 82 B.R. 919, 923 (Bankr. S.D. Ohio 1998) (same).

3. The Motion should also be denied because it does not provide the Committee or potential purchasers with a sufficient opportunity to review the Purchase Agreement or proposed sale order (the “Sale Order”). The Debtors intend to file the Purchase Agreement only two days prior to the hearing on the Motion. Motion at ¶ 32. And the Debtors have not set any deadline by which the Sale Order must be filed. Both of those documents are integral components of a sale that the Committee must have sufficient time to review and object to, if necessary. Similarly, the Debtors’ failure to publicly file the Purchase Agreement and Sale Order may impair the ability of potential purchasers to submit bids given the substantive nature of those documents.

B. The Expense Reimbursement Should Not Be Approved

4. The Motion seeks approval of bid protections consisting of an expense reimbursement of up to \$500,000 (the “Expense Reimbursement”) for the Buyer’s out of pocket expenses related to the Transaction in the event the Purchase Agreement is terminated in favor of an alternative transaction. *See* Motion, Ex. A, Term Sheet, § 8. The Expense Reimbursement amounts to over **20%** of the \$2,425,000 Purchase Price and is patently unreasonable for a transaction of this size.⁴ The unreasonably high Expense Reimbursement will chill third party

³ The Debtors concede that the Mexican Business was not marketed as part of a public process. Instead, the Mexican Business was “marketed to a targeted pool of sophisticated purchasers” and was not “offered for sale at the auction that was held on January 22, 2020 and was not contemplated to be sold pursuant to the Remaining Assets Bidding Procedures Order [D.I. 219] nor the Remaining Assets Sale Procedures Order [D.I. 431].” Motion, ¶ 12.

⁴ Courts in this district generally find bid protections of 3-4% of the purchase price to be reasonable. *See, e.g., Suitable Technologies, Inc.*, 20-10432 (MFW) (Bankr. D. Del. Apr. 20, 2020) (permitting Debtor to agree to bid protections in

bidding by placing the Buyer in a uniquely advantageous position and amounts to nothing more than an outsized bid increment that benefits the Buyer at the expense of the estates.

5. The Expense Reimbursement is also unreasonable in light of the fact that the only guaranteed payment by Buyer to the Debtors is a \$525,000 payment at closing, with all remaining payments subject to future conditions that may never come to pass. *See* Motion, Ex. A, Term Sheet, § 4. The Expense Reimbursement is over **95%** of the closing payment. In addition, the Expense Reimbursement is unreasonable considering that the Purchase Agreement also provides for the Debtors to pay up to \$175,000 of the Buyer's legal fees as part of the Transaction. *See id.* at § 15. Thus, given the totality of the circumstances, the Expense Reimbursement is not necessary to preserve the value of the estate and should not be approved. *See, e.g., Calpine v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Environmental Energy, Inc.)*, 181 F.3d 527, 535 (3d Cir. 1999) (“[T]he allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate.”).

any Stalking Horse APA provided that in the aggregate, any Break-Up Fee be limited to 2% and any Expense Reimbursement be limited to 1% of the Stalking Horse Purchase Price); *In re Hospital Acquisition LLC, et al*, No. 19-10998 (BLS) (Bankr. D. Del. Jun. 27, 2019) (limiting break-up fees to an amount no greater than 3% and expense reimbursement to \$250,000); *Southcross Energy Partners, L.P., et al*, No. 19-10702 (MFW) (Bankr. D. Del. Jun. 13, 2019) (approving break-up fee not to exceed, in the aggregate, 3% of the purchase price); *In re Dextera Surgical Inc.*, No. 17-12913 (KJC) (Bankr. D. Del. Jan. 5, 2018) (approving break-up fee of \$519,000 [or 3% of \$17.3 million sale price]); *In re CMTSU Liquidation*, No. 17-10772 (BLS) (Bankr. D. Del. May 2, 2017) (approving a break-up fee of 3%); *In re ATopTech, Inc.*, No. 17-10111 (MFW) (Bankr. D. Del. Apr. 21, 2017) (limiting break-up fee to 3%); *In re TerraVia Holdings Inc.*, No. 17-11655 (CSS) (Bankr. D. Del. Aug. 22, 2017) (approving break-up fee of 2.5%); *In re BPS US Holdings Inc.*, No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016) (approving break-up fee equal to 3%); *In re VSI Liquidating*, No. 16-11290 (CSS) (Bankr. D. Del. June 28, 2016) (approving break-up fee equal to 3%); *In re Emerald Oil, Inc.*, No. 16-10704 (KG) (Bankr. D. Del. Aug. 31, 2016) (approving break-up fee of 3%); *In re Synagro Techs., Inc.*, No. 13-11041 (BLS) (Bankr. D. Del. May 13, 2013) (approving break-up fee equal to 3%); *see also In re Standard Register Co.*, No. 15-10541 (BLS) (Bankr. D. Del. Apr. 13, 2015), Hr'g Tr. 106:2-107:7 (observing that “we typically have a cap of 3 percent” in denying a break-up fee to a secured creditor stalking horse bidder).

RESERVATION OF RIGHTS

6. The Committee reserves all rights, claims, and defenses with respect to this matter, including without limitation, with respect to the Motion, Purchase Agreement, and Sale Order.

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WHEREFORE, the Committee respectfully requests that the Court not grant the Motion without the modifications proposed herein, and enter such other and further relief as the Court deems just and proper.

Dated: May 14, 2020
Wilmington, Delaware

Respectfully submitted,

/s/ D. Ryan Slaugh

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CERTIFICATE OF SERVICE

I, D. Ryan Slaugh, do hereby certify that on May 14, 2020, a copy of the foregoing *Limited Objection of the Official Committee of Unsecured Creditors to the Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Enter into the Purchase Agreement; (II) Approving the Sale of the Mexican Business, Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (III) Authorizing the Debtors to Take All Actions Necessary to Consummate the Private Sale; (IV) Authorizing the Debtors to Assume and Assign Certain Executory Contracts; (V) Approving Bidding Protections; and (VI) Granting Related Relief* was served on the parties listed on the attached service list in the manner indicated.

/s/ D. Ryan Slaugh

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